

SENATE BILL 1708  
By Miller J

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 82; Title 11; Title 59; Title 60; Title 68 and Title 69, relative to the environment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-211-814, is amended by deleting such section in its entirety and by substituting instead the following language:

(a) (1) Each region shall submit its plan to the department of environment and conservation by July 1, 1994. The plan shall be formulated in strict compliance with § 68-211-815. After receiving a plan, the department shall approve or disapprove the plan within ninety (90) days. The department shall approve the plan if it adequately addresses each element required by § 68-211-815. If a plan is disapproved, the department shall state in detail the reasons for such disapproval. The region shall review any disapproved plan and shall resubmit a plan which corrects all deficiencies to the department within sixty (60) days of receiving the letter of disapproval.

(2) The plan may be revised at any time to reflect subsequent developments in the region and shall be revised every five (5) years after the plan's initial approval. Each revised

plan shall be submitted to, reviewed by and approved or disapproved by the department of environment and conservation in the same manner as the initial plan.

(3) The department may require annual progress reports on the implementation of a plan from a region.

(b) (1) (A) If the commissioner approves the plan, the region or solid waste authority, if one has been formed pursuant to part 9 of this chapter, by resolution and subsequent adoption of ordinances by counties and municipalities in the region, may also regulate the flow of collected municipal solid waste generated within the region. Prior to the adoption of any resolution declaring the necessity of requiring mandatory flow of municipal solid waste, the region or authority, following one (1) or more public hearings, shall demonstrate in writing to the commissioner that it has considered the utilization of any municipal solid waste management facility in existence within the region on July 1, 1991, which meets the proposed or final federal Resource Conservation and Recovery Act (RCRA) Subtitle D regulations. The region or authority must show that its decision not to use the existing facility is based on the fact that:

(i) Such facility is environmentally unsound or inadequate to meet the region's ten-year capacity assurance plan;

(ii) (a) Costs for the use of such facility are inconsistent with comparable facilities within the state; or

(b) The existing facility is operating in a manner that is inconsistent with the plan; and

(iii) The waste subject to flow control will be sent only to a facility or facilities that meet all state and federal regulations.

(B) The region or authority may restrict access to any landfills and incinerators which dispose of municipal solid waste by excluding waste originating with persons or entities outside the region in order to effectuate the plan. If a facility within a region has accepted waste from a specific source outside the region prior to July 1, 1991, the region may not prohibit that facility

from continuing to accept waste from that source, unless the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan.

(C) Appeal of final actions of the region or authority, including any determinations under subdivision (b)(1), shall be taken by an aggrieved person within forty-five (45) days to any chancery court in the region or authority which took such final action.

(D) After the plan is approved, the region must approve any application for a permit for a solid waste disposal facility or incinerator within the region as is consistent with the region's disposal needs before any permit is issued by the commissioner pursuant to this chapter.

(2) (A) An applicant for a permit for construction or expansion of a solid waste disposal facility or incinerator shall submit a copy of the application to the region at or before the time the application is submitted to the commissioner. The region shall review the application for compliance with the provisions of this section, and shall conduct a public hearing after public notice has been given in accordance with title 8, chapter 44, prior to making the determination provided for in this subdivision. The hearing shall afford all interested persons an opportunity to submit written and oral comments, and the proceeding shall be recorded and transcribed. The region shall render a decision on the application within ninety (90) days after receipt of a complete application. The region shall immediately notify the commissioner of its acceptance or rejection of an application.

(B) The region may reject an application for a new solid waste disposal facility or incinerator or expansion of an existing solid waste disposal facility or incinerator within the region only upon determining that the application is inconsistent with the solid waste management plan adopted by the county or region and approved by the department, and the region shall document in writing the specific grounds on which the application is inconsistent with such plan.

(C) Where a region rejects an application, the commissioner shall not issue the permit unless the commissioner finds that the decision of the region is arbitrary and capricious and unsupported in the record developed before the region.

(D) Appeal of final actions of the region, including any determination under subdivision (b)(2)(B), shall be taken by an aggrieved person within thirty (30) days to the chancery court of Davidson County. The court shall exercise the same review as it would in a case arising under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. For the purposes of this section, an "aggrieved person" is limited to persons applying for permits, persons who own property or live within a three-mile radius of the facility or site that is proposed for permitting, or cities and counties in which the proposed facility is located.

(E) The region shall provide for reasonable public notice of meetings. The region shall be subject to title 10, chapter 7, part 5. The region shall act in accordance with title 8, chapter 44.

(3) If the region has formed a solid waste authority pursuant to part 9 of this chapter, then the authority shall approve any permit applications as provided for in this section instead of the region.

(4) A region or solid waste authority may not impair the obligations of contracts entered into before the date of approval of the region's plan in violation of the Tennessee Constitution, art. I, § 20.

(5) A region or solid waste authority may not restrict the movement of recovered materials into, out of, or within the region.

(6) Before submitting a plan required by this part, each municipal solid waste region shall hold a public hearing on the proposed plan or revised plan.

SECTION 2. This act shall take effect July 1, 2003, the public welfare requiring it.